IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

C. P. NO. 203 OF 2003

PRABHAKAR ATMARAM PATIL ... Petitioner
vs.
RUPLA DIVYA MORE through Lrs. ... Respondents

Mr. K.N. Kore for petitioner
Mr. U.S. Patil for respondents

CORAM: D. G. KARNIK **J.**

DATE: 12th December 2006

P.C.:

1. Heard learned counsel for the parties.

2. This contempt petition is filed by the petitioner alleging that the respondents have committed breach of the order of interim stay passed by this court on 18th October 2001 in writ petition no. 4929 of 2002.

3. By order dated 6th August 2001 the Additional Commissioner , Konkan Division, ordered that the possession of the suit property be restored to respondent nos. 1 to 3. The petitioner challenged the said order by filing writ petition no. 4929 of 2002. On 18th October 2001 after hearing counsel

for the petitioner this court granted stay of the execution of the order dated 6th August 2001 passed by the Deputy Commissioner, Konkan Division. It is alleged that despite this order of stay the respondent no.4 handed over possession of the suit property to heirs of original respondent no. 1 and thereby he committed breach of the order of the court. The petitioner has therefore prayed for taking action in contempt against respondent no.1.

4. Respondent no.1 (g), has filed an affidavit on behalf of all the heirs of original respondent no.1 stating that he was not aware of the order of stay granted by this court on 18th October 2001. In para 4 of the affidavit he has specifically averred that the order of the High Court was not intimated to them immediately and had the order been communicated they would not have taken possession of the suit property . Perusal of the order dated 18th October 2001 shows that only counsel for the petitioner was heard while passing the order. The respondents were not served and were not present when the order of stay was passed. In the affidavit in reply, respondent no.1(g) has specifically stated that the order was not communicated to them. In the affidavit in rejoinder it is not stated when the order of stay was served on the original respondent no.1 or his heirs. Therefore it cannot be said that respondent no. 1 or his heirs were aware of the order of stay granted by this court when the possession was handed over

to them.

5. Same is the case so far as respondent no.4 is concerned. Respondent no.4 in his affidavit has stated that he was not aware of the order of stay passed by this court when he handed over the possession to the heirs of respondent no.1 on 19th October 2001. He has specifically stated that possession was handed over to respondent no.1 at 11 a.m. on 19th October 2001 and at that time he was not aware of the order which was not communicated to him. In the affidavit in rejoinder it was not stated as to when the order was communicated to the respondent no.4. In the circumstances there is no material before me to indicate that the respondent no.4 was aware of the order of stay passed by this court on 18th October 2001 when the respondent no.4 handed over possession to respondent no.1 at about 11 a.m. On 19th October 2001. In the circumstances it cannot be said that the respondents have knowingly disobeyed the order of this court.

6. Relying upon the decision of the Supreme Court in State of Orissa vs. Aswini Kumar Baliar Singh, reported in (2006) 6 SCC 759 learned counsel for the petitioner submitted that the court can issue the directions in exercise of contempt jurisdiction instead of taking penal action against the contemnors. He therefore prayed that the court should order

restoration of the possession to the petitioner instead of punishing the respondents. In para 8 of the said decision the Supreme Court has held that in a given case although no penal action is taken against the contemnor the court can issue appropriate directions. But the said statement is qualified by the further statement that the directions can be issued after the finding is arrived at that the contemnor has committed a contempt. In the present case as I have already held that the respondent nos. 1 and 4 were not aware of the order of the court and therefore they have not disobeyed the order of the court direction for restoration of possession cannot be given in exercise of contempt jurisdiction. Needless to say the petitioner is free to move the writ court for appropriate directions. With these observations this contempt petition is dismissed.

Certified copy expedited.

(D.G. KARNIK J.)